

**NOTICE 291 OF 2013****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****PRIMEPRAC (PROPRIETARY) LIMITED****AND****MURRAY & ROBERTS RETAIL ASSET MANAGEMENT (PROPRIETARY) LIMITED****2012SEP0582**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firm is Primeprac (Pty) Ltd ("Primeprac"), a firm incorporated in terms of the laws of the Republic of South Africa. Primeprac is controlled by Carlmac Steel (Pty) Ltd ("Carlmac"). Primeprac is a firm incorporated for purposes of the current acquisition of M & R Retail as such does not conduct any businesses. However, Carlmac hold interest in Capital Africa Steel (Pty) Ltd ("CAS"), which manufactures and supplies steel reinforcement and welded mesh fabric through its Reinforcing Mesh Solutions ("RMS") division.

The primary target firm is Murray & Roberts Retail Assets Management (Pty) Ltd ("M & R Retail"), a firm incorporated in terms of the laws of the Republic of South Africa. M & R Retail is created for the housing of M & R steel business which involves the manufacturing and supply of mesh and wire products ("referred to as RSC") and providing reinforcing steel (rebar) solutions to construction firms ("referred to as BRC") ("hereinafter referred reference to RSC incorporates the activities of M & R Ltd which relates to BRC).

In terms of the Sale of Business Agreement, Primeprac intends to acquire 100% interest in M & R Retail, thus acquiring the Murray & Roberts RSC business. Upon completion of the transaction Primeprac will have sole control over M & R Retail.

The transaction result in an overlap in two markets namely: (i) upstream market for the cutting, bending, supply and installation of rebar in construction products and (ii) in the market for the supply of welded mesh. The Commission identified unilateral concerns as the merging parties' combined market share in both these affected market are relatively high and the markets are characterised by high barriers to entry and low countervailing power. Further, the Commission identified a concerns related to possible coordinated conduct between CAS (specifically through RMS) as the transaction results in Carlmac holding interest in RMS and RSC. In view of uncovered cartel conduct in both affected markets and the Competition Tribunal's findings against RMS, the Commission is of the view that the transaction is likely to facilitate collusion between the merging parties.

In addition, the Commission found that the proposed transaction results in employment concerns as the Primeprac's intended restructuring will result in job losses.

In order to address all the concerns the Commission approves the transaction subject to the following conditions.

**1. Definitions**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **"Affected markets"** means the market for the supply of cut and bent rebar to construction companies; and the market for the supply of welded mesh to construction companies.
- 1.2. **"Affected employees"** means certain employees which might be retrenched by the merging parties;
- 1.3. **"Alert Steel"** means Alert Steel Holdings Limited, a firm incorporated in terms of the laws of the Republic of South Africa;
- 1.4. **"Approval Date"** means the date referred to in the Competition Commission's

Merger Clearance Certificate (Form CC 15);

- 1.5. **"BRC"** means BRC Mesh Reinforcing (Proprietary) Limited, a subsidiary of M & R Ltd that carries out all the operations of M & R Ltd in the supply of mesh and wire products for reinforcing steel solutions;
- 1.6. **"CAS"** means Capital Africa Steel (Pty) Ltd, a firm incorporated in terms of the laws of the Republic of South Africa
- 1.7. **"Carlmac"** means Carlmac Steel (Pty) Ltd a firm incorporated in terms of the laws of the Republic of South Africa;
- 1.8. **"Commission"** means the Competition Commission of South Africa;
- 1.9. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.10. **"Conditions"** means these conditions;
- 1.11. **"Interim period"** means the period;
  - i. both Carlmac and CAS hold interests in Alert Steel; and
  - ii. Carlmac holds an interest in CAS
- 1.12. **"McCulloch"** means Mr Malcom McCulloch, a director of Primeprac and controlling shareholder of Carlmac
- 1.13. **"Merger transaction"** means the acquisition by Primeprac of 100% of the issued share capital of M&R Retail;
- 1.14. **"Merging Parties"** means Primeprac and M & R Retail;
- 1.15. **"M&R Retail"** means Murray & Roberts Retail Asset Management (Pty) Ltd, a firm incorporated in terms of the laws of the Republic of South Africa;
- 1.16. **"M & R Retail Business"** means all the firms which are to be transferred by M&R Ltd to M&R Retail as part of the proposed transaction, which include Bestforce Reinforcing Steel Gauteng (Pty) Ltd, Limpopo Reinforcing Steel slabs (Pty) Ltd, Cyclone Reinforcing Steel Gauteng (Pty) Ltd, Mthatha Reinforcing Steel (Pty) Ltd, SA Rebar Holdings (Pty) Ltd and Khokane Reinforcing (Pty) Ltd, and shares in BRC Mesh Reinforcing (Pty) Ltd, Reinforcing Steel Contractors (Pty) Ltd, RCS

International Trading (Pty) Ltd, Reinforcing Steel Systems (Pty) Ltd and Specialist Equipment Manufactures (Pty) Ltd;

- 1.17. **"M&R Ltd"** means Murray & Roberts Limited, a firm incorporated in terms of the laws of the Republic of South Africa;
- 1.18. **"Primeprac"** means Primeprac (Pty) Ltd a firm incorporated in terms of the laws of the Republic of South Africa;
- 1.19. **"RMS"** means Reinforcing Mesh Solutions, a trading division of CAS involved in operations related to the manufacturing and supply of steel reinforcement, rebar and welded mesh;
- 1.20. **"RSC"** means RSC International Trading (Proprietary) Limited, a M & R Ltd company that includes all the operations of M & R Ltd consisting of cutting, bending and installation of rebar for reinforcing steel solutions;

## **2. Recordal**

- 2.1. On 28 September 2012, the merging parties filed this merger transaction with the Commission. Following its investigation of this merger transaction, the Commission is of the view that the proposed transaction is likely to raise substantial unilateral competition concerns given the high post-merger market share of the merging parties in all the affected markets.
- 2.2. In addition, the Commission has concerns in relation to the cross directorship resulting from Carlmac's interest in CAS and Alert Steel. Given the history of collusion in the affected markets, these cross-directorships are likely to create a platform for the merging parties to continue to engage in coordinated conduct.
- 2.3. Further, given the possible impact that the transaction may have on employment, in particular the employees of M & R Retail Business, the Commission is of the view that it is necessary to impose employment conditions.
- 2.4. Therefore the Commission sets out the following conditions:

### **3. Conditions to the approval of the merger**

#### **Cross-directorships**

- 3.1. Any director or shareholder of Carlmac must resign from the board of CAS with immediate effect;
- 3.2. In the interim period Carlmac shall ensure that it does not share or facilitate the exchange of competitively sensitive information. This information includes but is not limited to:
  - 3.2.1. Pricing;
  - 3.2.2. Margins;
  - 3.2.3. Costs;
  - 3.2.4. Marketing strategies; and
  - 3.2.5. Budgets and business plans.

### **4. Employment**

- 4.1. For a period after the approval date the merging parties:
  - 4.1.1. shall not retrench more than the specified number of employees at M & R Retail business, as a result of the merger.
  - 4.1.2. For the purposes hereof –
    - 4.1.2.1. Retrenchments following on voluntary separation agreements and early retirement packages, unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act 1995 (as amended) are not merger related retrenchments; and
    - 4.1.2.2. The board of directors and the executive management of M & R Retail Business are not regarded as employees of M & R Retail business.
- 4.2. The merging parties undertake to redeploy the affected employees within the Carlmac Group, which includes all firms affiliated and/or associated with Carlmac within a specified period from the approval date. Further, the merging parties

undertake that the redeployed employees will not be employed under terms which are less favourable than their current positions.

- 4.3. The merging parties undertake to support and assist all affected employees. The support and assistance shall include but shall not be limited to:
- 4.3.1. making available counselling, pre and post the termination of employment;
  - 4.3.2. providing individual assistance and support in dealing with administrative issues (e.g. pension, tax and UIF contributions and payments) that may arise as a result of the termination of employment; and
  - 4.3.3. for a period of 12 (twelve) months after the termination of employment, the merging parties shall give preference to affected employees for any suitable vacancy that may arise in the merged entity's business provided the affected employee has, inter alia, the requisite skills, experience and qualifications.

#### **5. Monitoring of compliance with the Conditions**

- 5.1. Carimac must submit an affidavit by its Chief Executive Officer confirming compliance with the above conditions by 15 January 2013;
- 5.2. Carimac must report to the Commission on a 6 (six) monthly basis on the employment conditions. The report must include details of the number of employees retrenched, their skills levels and job description, the number of blue collar employees redeployed, and details of their redeployment.
- 5.3. Further, with each report submitted the merged entity must submit an affidavit by its Chief Executive Officer confirming the accuracy of the report and confirming the merged entity's compliance with conditions.
- 5.4. The first report and accompanying affidavit must be submitted on the 1<sup>st</sup> of June 2013.

All reporting documents and correspondences in relation to these conditions must be submitted to the Commission's email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za)

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.